

UNITED STATES DISTRICT COURT
THE DISTRICT OF PUERTO RICO X

RAYMOND HERNANDEZ-ALBINO
Petitioner

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AFFIDAVIT IN SUPPORT OF MOTION
TO VACATE JUDGMENT PURSUANT TO
FED. R. CIV. P. RULE 60(b)(6)

Vs.

UNITED STATES OF AMERICA
Respondent

CIVIL CASE NO.

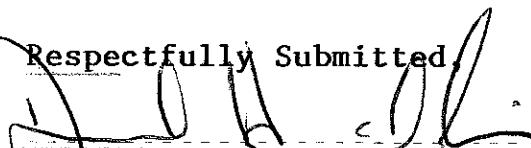
X CRIMINAL CASE NO. 97-0099(HL)

State of Pennsylvania }
County of Schuylkill }

RAYMOND HERNANDEZ-ALBINO, being first duly sworn,
deposes and says:

1. I am Petitioner in the above captured matter.
2. Annexed hereto are true copies of pages 1-9 of the transcript of proceedings on November 17, 1997. Also annexed hereto are true copies of the cover page and the certification of the shorthand stenographer.

At Schuylkill, Pennsylvania 12th. day of July, 2005.

Respectfully Submitted,

Raymond Hernandez-Albino, Pro-Se
Reg. No 14736-069 C-2/B-15
FPC Schuylkill
P.O. Box 670
Minersville, PA. 17954-0670

Sworn to before me on this 12 day of July, 2005.


Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
William E. Rasinger, Notary Public
Minersville Boro, Schuylkill County
My Commission Expires Mar. 20, 2006

Member, Pennsylvania Association of Notaries

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2
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

4 UNITED STATES OF AMERICA, * CRIMINAL NO. 97-99 (HL)
5 Plaintiff, *
6 vs. * San Juan, Puerto Rico
7 RAYMOND HERNANDEZ ALBINO, * November 17, 1997
8 Defendant. * 9:15 a.m.
----- *

9
10 FOURTH DAY OF JURY TRIAL

11 BEFORE THE HONORABLE HECTOR M. LAFFITTE,
12 UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES

14 COUNSEL FOR THE GOVERNMENT

15 JOHN TEAKELL, ESQ.

16 DOROTHY FERRER, ESQ.

17 Assistant United States Attorneys

18 COUNSEL FOR DEFENDANT

19 EDGAR VEGA, ESQ.

20
21 Presjudicial
22 grounds for
23 new trial or
24 prosecutor misconduct

25 BARBARA DACHMAN, RPR, OCR
(787) 722-0132
barbarad@prtc.net

BARBARA DACHMAN, RPR, OCR

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BARBARA DACHMAN, RPR, OCR

1 THE COURT: Good morning.
2

3 Yes, counsel, I will hear you.
4

5 MR. VEGA: If I may, your Honor.
6

7 Just as --
8

9 THE COURT: Let me call the case first.
10

11 THE COURT CLERK: Criminal Case 97-99; United
12 States of America v. Raymond Hernandez Albino, for further
13 jury trial, and the attorneys are the same attorneys as
14 last Friday.
15

16 MR. VEGA: Yes, your Honor. If I may. Good
17 morning.
18

19 THE COURT: Good morning.
20

21 MR. VEGA: Attorney Edgar Vega for the record on
22 behalf of Mr. Raymond Hernandez Albino.
23

24 Your Honor, just as a cautionary matter, I want to
25 submit to the Court or to anticipate to the Court that my
client will be taking the stand concerning some
biographical data or facts concerning where he was born,
his family, his academic preparation, and also he will go
over some explanation of how he bought his house.

26 But that the defendant is not going to talk anything
27 on the direct examination about the facts of the case which
28 occurred on April 23rd. He will waive his constitutional
29 right to remain silent on those matters covered or under
30 the direct examination, or any other matter reasonably

1 related to the direct.

2 Just as a cautionary matter, I want to anticipate
3 this because we will object any question from the
4 Government out of the scope of the direct, pretending, in
5 front of the jury, to talk about the facts occurring on
6 April 23rd which could compel my client to raise his Fifth
7 Amendment right concerning the facts of April 23rd.

8 We are not going to talk anything about the facts
9 which occurred on April 23rd. We are not going to ask
10 about cellular phones, we are not going to ask about the
11 presence of my client at the hotel, and according to Rule
12 611 we will be requesting the Court to limit the
13 cross-examination to the extent of the direct or to any
14 other matter of credibility reasonably related to the
15 direct examination.

16 And just as a cautionary matter, we submit that to
17 the Court because of the effect that compelling my client
18 to be raising his Fifth Amendment right in front of the
19 jury could have.

20 THE COURT: Let me hear from the Government.

21 MR. TEAKELL: May it please the Court, your
22 Honor.

23 Maybe I am just used to practicing in the Fifth
24 Circuit, but I did not think that the defendant could build
25 a wall like that; take the stand and then want to be asked

1 certain questions and then not be asked other questions. I
2 did not think that was proper, I do not think it is proper
3 under the law.

4 And secondly, if allowed to testify, the cooperating
5 defendant Orlando Ramirez would say that the defendant had
6 lent him money before on different occasions; he has known
7 him to be a money lender.

8 Additionally, the defendant, through some of his
9 witnesses and possibly through some of my questioning of
10 the defendant's witnesses, opened the door, so to speak,
11 when they were testifying last week, late last week, about
12 the defendant's occupation and other sources of income.

13 THE COURT: And reputation.

14 MR. TEAKELL: Sir?

15 THE COURT: And reputation.

16 MR. TEAKELL: And reputation, yes, sir.

17 THE COURT: Well, Mr. Vega, it seems to me that
18 the Government can certainly have the right to impeach the
19 credibility of your witness, because once he takes the
20 stand he becomes a witness like anybody else. And he can
21 be asked matters about his reputation because he put his
22 reputation at issue in this case, and I think that the
23 Government can enter into the area of impeachment. There
24 is a witness who testified that -- and there is evidence
25 right in the record -- who testified about his conduct and

1 actions on the day in question.

2 So I don't know whether the Government can be tied up
3 to that direct, because once he takes the stand, his
4 credibility is at issue also.

5 MR. VEGA: Yes, your Honor. At this point, then,
6 your Honor, I need to confer with my client because --

7 THE COURT: Well, let me say this, because I want
8 your client to listen to this.

9 Your client has the right to testify, absolute right
10 to testify. He does have the absolute right not to
11 testify, and his decision whether to testify or not is
12 completely voluntarily. And once he makes the decision, I
13 am going to have that decision on the record. From him.
14 From the defendant.

15 MR. VEGA: If I may, I want to add also to that,
16 your Honor, that the decision to take the stand or not is
17 up to the defendant, not the lawyer. The lawyer just
18 recommends.

19 But, your Honor, I beg from the Court a five-minute
20 recess to talk with my client --

21 THE COURT: Certainly.

22 MR. VEGA: -- about this delicate --

23 THE COURT: But I want to put it on the record
24 because I have had cases where the defendant doesn't take
25 the stand, and then three years from now he comes and he

1 says, "Well, my lawyer prevented me from taking the stand."

2 If he is not going to take the stand, he has to tell
3 me on the record whether he is doing it willingly, without
4 any threat or coercion.

5 In the same way, if he takes the stand, it's because
6 he wants to take the stand, not because anyone has coerced
7 him. I mean, it's his own decision.

8 Very well, I give you five minutes.

9 MR. VEGA: Thank you.

10 (Whereupon, a short recess is taken.)

11 MR. VEGA: If I may, your Honor.

12 THE COURT: Yes.

13 MR. VEGA: Attorney Edgar Vega for the record.

14 After having consulted with my client, after having
15 talked to his brother, his wife, his father, the defendant
16 has decided not to take the stand and remain in silence.

17 I will request from the Court to examine my client on
18 this matter.

19 THE COURT: Very well. Please stand up.

20 (Whereupon, the defendant stands.)

21 THE COURT: Your counsel has indicated to the
22 Court that after fully discussing this matter with you and
23 your family during the recess that I granted at his request
24 to discuss this matter, that you have decided not to take
25 the stand. Is that -- in your defense. Is that so?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you have been fully aware that
3 you have the right to do so if you wish to do so.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Very well. You may be seated.

6 THE DEFENDANT: Thank you.

7 MR. VEGA: Then we are ready to proceed.

8 Your Honor, the only thing I want to submit is --
9 although Minerva told me that the first identification was
10 admitted as exhibit, right?

11 THE COURT CLERK: Yes, you have one exhibit,
12 Exhibit A.

13 MR. VEGA: So we are ready to proceed, your
14 Honor.

15 THE COURT: So we have to bring the jury in and
16 you have to tell the jury that you are resting your case.

17 MR. VEGA: Yes, your Honor.

18 THE COURT: Mr. Teakell, did you submit your
19 instructions that I requested, the ones that I requested
20 from you?

21 MR. TEAKELL: Your Honor, I had them here this
22 morning and I realized that there were corrections that
23 needed to be made, so I gave them to my secretary a little
24 while ago and she will do it. I will have them shortly.

25 THE COURT: How much time will you need for the

1 closing, counsel?

2 MR. VEGA: How much what, your Honor?

3 THE COURT: Time, time.

4 MR. VEGA: For the closing? I guess about an
5 hour.

6 THE COURT: Fine.

7 (Whereupon, the jury enters the courtroom.)

8 THE COURT: Good morning, ladies and gentlemen of
9 the jury. I hope that you have had a restful weekend and
10 that now you are ready to proceed.

11 Mr. Vega.

12 MR. VEGA: Yes, your Honor. Good morning.

13 The defense rests, your Honor.

14 THE COURT: Very well.

15 Now that the presentation of evidence has concluded,
16 now it's time for summation.

17 As you recall during my preliminary instructions, I
18 told you that argument of counsel is not evidence; that the
19 purpose of summation is to analyze the evidence and to try
20 to have you draw the inferences that counsel wants you to
21 draw that are most favorable to their cases, respective
22 cases or positions, and to point out to you matters that
23 otherwise might escape your notice.

24 If there is any discrepancy in your minds about what
25 counsel says and what you think the evidence is or remember

1 **REPORTER'S CERTIFICATE**

2 I, **BARBARA DACHMAN**, Official Court Reporter in
3 the United States District Court for the District of Puerto
4 Rico, appointed pursuant to the provisions of Title 28,
5 United States Code, Section 753, do hereby certify that the
6 foregoing is a true and correct transcript of the
7 proceedings had in the within entitled and numbered cause
8 on the date hereinbefore set forth; and I do further
9 certify that the foregoing transcript has been prepared
10 under my direction.

11
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16 Barbara Dachman
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25

BARBARA DACHMAN

AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF KINGS } SS:
 }

Jesus Hernandez-Pagan, being of full age duly sworn according to law upon oath, deposes and says:

- 1) I'm Raymond Hernandez-Albino's father and we have maintained a relationship all of our lives.
- 2) In the morning of November 17, 1997, I was present for my son's trial. I was there when Mr. Vega asked the Judge to please give him 5 minutes, in order to talk to my son and the rest of the family, about whether he should take the stand.
- 3) Mr. Vega mentioned in front of the family as he was going to testify, that my son was not ready to testify. Then recommended that my son, Raymond Hernandez-Albino, should not take the stand, because my son was not prepared to testify.
- 4) This conversation happened just outside the court room, where all the family reunited together which were, Vidal Cortez-Nieves, Millitza Cortez-Maldonado, Paula Torres-Velez, Daniel Hernandez-Valladares, Jesus Hernandez-Albino and Victor Hernandez-Pagan.
- 5) As we returned to the court room and my son addressed himself to the Honorable Judge, waiving his right to testify, I noticed that my son Raymond Hernandez-Albino, was very upset, because he wanted to have the opportunity to give his story to the jury.

I'm fowarding this affidavit to the Honorable Court in the interest of justice and signed below in the presence of a Notary Public as required for this attestation.

Jesus Hernandez
Jesus Hernandez-Albino

Sworn and Subscribed before me on this 11th day of
July, 2005.

Alexander Cherkashen

ARMAN OHEVSHALOM
Notary Public, State of New York
No. 01OH6128074
Qualified In Kings County
Commission Expires June 06, 2009

Notary Public of _____ **07-11-2005**